IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No.7426 of 2004

Between:

Forum for a better Hyderabad (Confederation of Voluntary Organizations of Hyderabad) represented by its Secretary, Dr. Sajjala Jeevananda Reddy, S/o Subba Reddy, aged about 60 Years, Plot No.6, ICRISAT Colony, Secunderabad - 500 009.

..... PETITIONER

AND

1 Government of A.P., Represented by its Secretary,
Department of Youth Advancement Tourism & Culture, Secretariat,

Hyderabad.

2 The Hyderabad Urban Development Authority represented by its Vice Chairman, Paiga Palace, Opp. Police Lines, Secunderabad.

3 Budha Purnima Project Authority, Rep. by its Vice Chairman, 1-8-323, Paiga Palace, Opp. Police Lines, Rasoolpura, Secunderabad-3

4 AP Pollution Control Board, Rep. by its Member Secretary, Maitrivanam, HUDA Complex, SR Nagar, Hyderabad -38.

5 The A.P. Tourism Development Corporation rep. by its

Chairman & Managing Director, Hyderabad.

6 M/s.Viceroy Hotels Limited, Lower Tank Bund,

Hyderabad, rep.by its Managing Director

Mr.P.Prabhakar Reddy, S/o P.Babul Reddy.

(Respondent No.5 is impleaded as per Court Order

dated 30-4-2003 in W.P.)

(Respondent No.6 is impleaded as per Court Order

dated 30-4-2004 in W.P.M.P.No.11139 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus declaring the action of the respondents in not taking action to prevent permanent structures with non-biodegradable substances next to water front of Hussian Sagar as unconstitutional and violation of Environment (Protection) Act 1986, Water (Prevention and Control of Pollution) Act , 1974 and also the spirit of the Judgement in WP No.26378 of 2000, reported in 2001 (4) ALD 776 (DB) and consequently direct the respondents to remove the permanent structures pointed out by the petitioner after declaring that no permanent structures shall come in and around the Hussain Sagar and no filling up of water body of Hussain Sagar shall take place as indicated in Judgment of Suprement Court in SCC 2001 (6) 496.

Counsel for Petitioner: Mr.K.S.MURTHY

Counsel for Respondent No.1: GP for Municipal Admn & Urban Dev

Counsel for Respondents 2 & 3: Sri B.Viswanatha Reddy

Counsel for Respondent 4: Sri S.V.Bhatt

Counsel for Respondent 5: Sri Nandigama Krishna Rao

Counsel for Respondent 6: Sri C.V.Nagarjuna Reddy

The Court made the following :

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ORDER: (per **C.V. RAMULU,J**)

This writ petition is filed as a public interest litigation to declare the action of respondents 1 to 4 in not taking action to prevent permanent structures with non-biodegradable substances next to water front of Hussain Sagar as unconstitutional and violative of Environment (Protection) Act,1986, Water (Prevention and Control of Pollution) Act,1974 and also the spirit of the Judgment of this Court reported in **FORUM FOR A BETTER HYDERABAD, (CVO OF HYDERABAD) v. GOVERNMENT OF ANDHRA PRADESH** and consequently to direct respondents 1 to 4 to remove the permanent structures pointed out by the petitioner.

The main thrust of the learned counsel for the petitioner is that respondents 1 and 4 permitted respondents 2,3,5 and 6 to set up permanent structures with non-biodegradable substances within 30 mtr buffer width zone of Hussain Sagar, which is in violation of Environment (Protection) Act,1986, Water (Prevention and Control of Pollution) Act,1974 and also the spirit of the Judgment of this Court referred to above. Hyderabad Urban Development Authority (HUDA) had issued a notification dated 4-5-2000 to save 169 lakes (water bodies) in and around twin cities. As per the above notification, a buffer belt of 30 metres width on all sides of lake shall be kept free from any type of construction in the interest of prevention of pollution to the lake waters and to allow free follow of water to the lakes and the said notification was issued in the public interest for ensuring a healthy environment for the twin cities. The Hussain Sagar lake of Khairatabad village was included at Serial No.3 of the list of 169 lakes appended to the above notification. Respondents 2 and 3 are taking up permanent structures for the purpose of Musical Water Fountain and Laser Show Display on water screen. Therefore, the official respondents permitting respondents 2,3,5 and 6 to raise permanent structures within 30 metres of buffer belt zone with non-biodegradable material is contrary to the said Judgment of this Court. It also disturbs the ecological balance and results in pollution of Hussain Sagar lake.

Initially, only the official respondents 1 to 4 were made parties to the writ petition. Subsequently, by an Order dated 30-4-2004, this Court *suo motu* impleaded A.P.Tourism Development Corporation as respondent No.5. M/s.Viceroy Hotels

Limited on filing W.P.M.P.No.11139 of 2004 to implead itself as a party-respondent, was impleaded as 6th respondent on 30-4-2004.

Respondent No.1 filed a detailed counter affidavit stating that Licence Agreement and Development & Management Agreement were entered into between the State Tourism Development Corporation and M/s.Palace Heights Hotel Limited, Hyderabad. The actual area on the ground is 2384 square yards instead of 2012.85 sq.yards and the number of Kiosks/Food Courts proposed are 10. A.P.Pollution Control Board issued No Objection Certificate subject to certain conditions. The Commissioner's report also confirmed that there are no permanent structures within 30 metres of water front. Neither the provisions of Environment (Protection) Act,1986 nor the Water (Prevention and Control of Pollution) Act,1974 nor the norms set up in any other law nor the above Judgment of this Court are violated.

Respondents 2 and 3 while filing a separate counter affidavit asserted that the Division Bench of this Court, in its earlier Judgment referred to above, observed that the other aspects of the proposed activities viz., construction of an amusement park etc., may be allowed, but prior to this, clearance must be obtained from the A.P. Pollution Control Board. This Court took note of the submission that the encroachments on the water spread area were a matter of past and it is now secured by roads on all sides. This aspect came up for consideration in another case being W.P.No.13656 of 2003 filed by the very same petitioner and this Court, after taking notice of what all that was being done by the State and its instrumentalities to preserve and protect Hussain Sagar lake and the recreation projects, dismissed the writ petition. This is yet another writ petition of the same type. The activity, which is now sought to be interdicted, so far as respondents 2 and 3 is concerned, is a very simple and an innocuous activity. Nearly Acs.3.00 of land situated adjacent to Lumbini Park, which was in private occupation, HUDA is planning to arrange a big dancing musical water fountain and a laser show display on water screen. This is being taken up after demolishing a building, which has been in existence there for several decades. There cannot be any legitimate apprehension that the project now designed by HUDA will in any way affect the environment of the waters in the lake.

Respondent No.4 – A.P. Pollution Control Board - filed a separate counter affidavit stating that on 6-2-2002, the proposal of Food Courts was discussed in the special meeting of the Board and the Board sought some clarification from the proponent

and requested to come with a revised lay-out plan showing the location of Food Courts, arrangement for public movement, sitting arrangements, vehicle parking etc. These matters were considered by the Board from pollution perspective on furnishing information by the proponent and the steps need to prevent/control such pollution. In the present case, the nature of pollution would be wet and dry garbage. Keeping this in mind, certain conditions have been prescribed. The Food Courts shall be dismantable and assembled structures with Teflon Coated Fabric. The cantilever slab over the water body has to be removed and shall not be erected. No cooking activity shall be taken up at Food Courts. Only pre-cooked food shall be served to the visitors and heating arrangements shall not cause any smoke nuisance in the lake- side. Inhouse arrangements shall be made for collection and storage of solid waste generated by way of left over foods, kitchen waste and discarded/used paper plates or packaging in aesthetically designed easily accessible garbage bins. It is further asserted that officials of the Board had inspected the project and found that the Food Courts were built with mild steel structure and with brick walls. A cantilever slab projecting into the lake was observed. However, there is no cooking facility provided at site. The unit provided 36 numbers of dust bins inside the Food Courts and lifting the solid waste through private vans. The proponent proposed for cold storage room. Further, it was observed that construction of Food Courts has been taken up within 30 metres from the lake. It was also asserted that the Board is of the opinion that the conditions imposed in this behalf are by and large followed by the proponent of the project. Officials of the Board also inspected 'Jaladrushayam' and found that the same was located adjacent to the A.P. Tourism Building. The Lazer Show and Water Fountain projects are yet to be cleared by this respondent.

Respondent No.5 – A.P. Tourism Corporation - also filed a separate counter affidavit stating that the State Tourism Corporation has been playing a leading role in making Andhra Pradesh a major tourist destination centre in the country, by improving facilities for tourists, in providing accommodation, catering, conducting package tours, Leisure Cruises & Pleasure Boating, Water Sports, Sound & Light shows, Eco-tourism, Adventure Tourism, Tourism Infrastructure Development etc. To attract more tourist inflow into the State of Andhra Pradesh, particularly to the twin cities of Hyderabad and Secunderabad, establishment of Food Courts near Hussain Sagar lake, is a part of the efforts of the Corporation in giving further boost to tourism in the State. In the meeting held on 25-11-2000, the State Tourism Promotion Board

requested HUDA to transfer certain extent of land in and around Hussain Sagar Lake to the A.P. Tourism Development Corporation for development of tourism. In response thereof, HUDA transferred 2375 sq.mtrs of land to the respondent-Corporation. The Corporation invited tenders for development of the Food Court Project near Hussain Sagar Lake under 'Build Operate Transfer (BOT)" for a period of 33 years. A.P.Pollution Control Board cleared the project, subject to the following conditions:

1. The food courts shall be dismantable and assembled structures with Teflon coated fabric. As per the revised designs of the Food Courts, the hanging cantilever slab over the water body has been removed and shall not be erected.

2. There shall be no cooking at the food courts. Only pre-cooked food shall be served to visitors. Heating arrangements shall not cause any smoke nuisance in the lakeside.

3. In-house arrangements shall be made for collection and storage of solid waste generated by way of left over foods, kitchen waste and discarded/used paper plates or packaging in aesthetically designed easily accessible garbage bins. We are informed that wet garbage of about 70 kg/day and dry garbage of about 20 to 30 kg/day will be generated.

4. To ensure proper collection and disposal of solid waste, the following precautions shall be undertaken:

    - The food court area shall have adequate and accessible dustbins.
    - Dustbins shall be provided spreading over 500 metres on either side of the Food Courts. The dustbins will be spaced at 20 metre intervals.
    - All the dustbins provided around the food courts shall be cleared of garbage every two house.
    - A pre-fabricated room of approximately 100 sq.ft. shall be provided at the site to store the wet garbage/liter till it is disposed to MCH landfill site next day morning. The temperature of the room shall be maintained at 4 o' C to prevent bacteria generation and odour from the garbage.
    - Any littering shall be immediately cleared by staff and shifted to dustbin/cold room.
    - An enclosed bin of approximately 50 sq.ft shall be provided for collecting dry garbage from various dustbins and kitchen till it is disposed to MCH landfill site next day morning.
    - The collected material in the cold room and enclosed bin shall be

cleared every day morning at 5.00 AM by private garbage disposal agencies and safely disposed to the MCH landfill site at Vanasthalipuram.

- Visitors shall be educated on litter management through signboards, messages on food packets, paper napkins.

5. Under no circumstances shall, the liquid or solid waste generated lead into the lake. The following measures shall be undertaken.

   - Nets of 6 metre width, dark in colour shall be spread over 500 metre on both sides of Food Courts shall be fixed along the water shoreline to prevent any solid waste getting into the water body.
   - Educational signboards and signages shall be placed at key locations to create awareness among visitors on ecology and environmental pollution.

6. The developer shall be liable under the E.(P) Act,1986 for any solid waste found in the premises of the food courts or in the water adjacent to the food courts.

7. No parking in front of the Food Courts shall be allowed. The parking lots for people visiting Food Courts shall be provided at site 5.

8. The developers shall take steps to clean the banks and of the Hussain Sagar and the inlet channel nearest to the food courts area to prevent odour.

9. The revised layout plan, solid waste management, visitor turnover management as presented, in the report submitted to the APPCB vide Letter dated 9.3.2002 shall be strictly followed.

It is also stated that the Food Courts are situated between Peoples' Plaza and Rock Garden and that all are temporary structures which can be dismantled. The Food Courts are erected with steel beams. The water body surrounding the lake is protected taking utmost care in adhering to the provisions of the Environment Protection Act and the Water (Prevention and Control of Pollution) Act,1974 and proper sewerage disposal system is being provided. It is also being ensured that under the decks proposed to be created, proper and strong netting is provided below them to avoid waste being thrown into the lake. The netting is designed in such a way that it may be removed at periodical intervals and cleaned. The licence agreement entered into *inter se* A.P.Tourism Development Corporation and M/s.Viceroy Hotels Limited – 6th respondent herein – contains the conditions specified by the Pollution Control Board while issuing clearance to the proposal of Food Courts at Necklace Road. The conditions imposed by the Board have either

already been complied with or are being complied with. The food courts are established with dismantable structures, which can be removed as and when required.

Respondent No.6 also filed an affidavit along with the implead petition stating *inter alia* that they are scrupulously following the conditions stipulated by the 4th respondent. Indeed, the very purpose of maintenance of 30 ft buffer from water area is intended to serve two-fold purpose; firstly, to prevent throwing of waste material into the water and secondly to allow free flow of water into the lake. As regards the first aspect, this has been fully taken care of by stipulating stringent standards by the 4th respondent-Board. Therefore, there is no basis for the writ petitioner's apprehension that the water is likely to be polluted. With regard to allowing of free flow of water into the lake, the structures raised by the 6th respondent are dismantable and is open on all sides, except in two stretches on one side. Absolute care has been taken to ensure free flow of water. Every conceivable care to maintain clear and pure environment was also taken. About 90% of the structures have already been completed. Respondent No.6 had spent huge amounts on the project, which not only provides food and recreation to the tourists, but also generates employment. An exclusive play area is earmarked for children, wherein modern play items, such as, Giant Wheel, Bumper Cars, Swings, Carousal, Sea Saw etc., are provided at huge cost. The writ petition is devoid of merits and is liable to be dismissed.

In this backdrop, Sri T.Suryakaran Reddy, Advocate, was appointed as *amicus curiae* to make spot inspection and to submit a report. After issuing notices to all the concerned, the *amicus curiae* inspected the site and found that the structures are beyond 30 metres distance from the existing water spread area. He also found that the structures raised in the area would not in any way restrict the inflow of water into the lake or outflow of the water from the lake even in the case of floods. The other shore area where no development is made is in a shabby state of affairs and is in unhygiene with garbage, polythene covers etc. Whereas, at the Food Courts area sufficient number of dust bins are provided and the area was maintained in clean and hygiene condition. Insofar as Buddha Purnima Project is concerned, there were already structures in the area, which are now being dismantled and taken up for construction of open air Auditorium with water fountain for establishment of a Laser

show. The open air Auditorium, which is under construction, is at a distance of 63 metres and 80 metres from the water spread area. In fact, already permanent structures are there nearer to the lake.

Learned counsel for respondents submits that the contention of learned counsel for the petitioner that there is a prohibition for taking up any permanent structures within 30 mtrs in the water front area of Hussain Sagar lake was neither subject matter of the decision rendered in **FORUM FOR A BETER HYDERABAD** case (supra) nor any notification under any statute has been published prohibiting such constructions. The notification dated 4-5-2000 was issued by HUDA pursuant to 12th phase of the Janmabhoomi programme of the State Government and it was desired that 30 mtrs width buffer belt on all sides of each lake must be kept free from any type of construction in the interest of prevention of pollution to the lake waters and to allow free flow of water to the lakes. Further, the said notification was issued to protect the interest of gullible citizens, who may invest their life's savings in a plot in lake beds and face hardship. Further the Judgment of this Court in **FORUM FOR A BETER HYDERABAD** case (supra) was rendered on 15-6-2001 i.e. almost one year after the said notification dated 4-5-2000. Therefore, the contention of the learned counsel for the petitioner that in view of the said Judgment and the notification dated 4-5-2000, any constructions taken up within 30 mtrs width of water front of Hussain Sagar lake are contrary to the spirit of the Judgment of this Court, is without any substance. The structures were taken up with steel beams, which are assembled with nuts and bolts, which can be dismantled at any time. Further, there was no condition that the structures should be taken up with non-biodegradable material. Pollution Control Board has taken all measures and imposed conditions necessary to protect the ecological balance and to take care of the provisions of the Environment (Protection) Act,1986 and Water (Prevention and Control of Pollution) Act,1974. The Food Courts have been provided with sufficient dust bins to collect solid waste and arrangements are made to transport the same for proper disposal.

Learned Standing Counsel for the 4th respondent-Board particularly asserted by drawing attention of this Court to the material papers filed on behalf of 5th respondent and stated that originally, the plan was as shown at page-3 of the said additional material papers, which were concrete structures and were also hanging on to the lake waters. The same was disapproved and thereafter fresh proposals

were submitted by the 6th respondent and the site was inspected and proposal was approved by the Board with all precautions to adhere to the provisions of the Environment (Protection) Act,1986 and Water (Prevention and Control of Pollution) Act,1974.

From the above, it is clear that the main thrust of the learned counsel for the petitioner that respondents 5 and 6 have violated the condition of 30 mtrs buffer belt as fixed in the notification dated 4-5-2000 and as contemplated under the Judgment of this Court in **FORUM FOR A BETER HYDERABAD** case (supra) is not made out. That was a notification issued in pursuance of a Janmabhoomi programme laying down guidelines for protection of 169 lakes in and around twin cities of Hyderabad and Secunderabad. Such a condition was not there in the above Judgment of this Court or in the conditions imposed by the 4th respondent-Board while granting permission to establish the Food Courts. Further, there was no condition that the structures should be built with non-biodegradable material. It was not one of the conditions either in the Judgment of this Court or in the notification. Even according to the respondent-Board no permanent structures have been taken up for the purpose of establishment of Food Courts and the structures were erected with steel beams and nuts and bolts, which can be dismantled at any time. Further, all measures have been taken to follow the provisions of the Environment (Protection) Act,1986 and Water (Prevention and Control of Pollution) Act,1974. The contention of the learned counsel for the petitioner that the non-imposition of condition, such as, leaving 30 mtrs buffer belt and only use of bio-degradable material, by Pollution Control Board as was done in the case of Rock Gardens and the structures made were all permanent and they were not made up of Teflon coated fabric is not tenable in view of the above discussion. What all the structures taken up by the 6th respondent were only temporary and dismantable at any time. Further, we are satisfied with the report submitted by the learned *amicus curiae* in this regard.

In a *probono publico* litigation like this, we cannot decide the matter as if it is an adversarial litigation. From the counter affidavits filed by the statutory authorities read with the report submitted the learned *amicus curiae,* it is clear that none of the provisions of the Environment (Protection) Act,1986 or the Water (Prevention and Control of Pollution) Act,1974 nor any conditions in the Judgment of this Court

referred to supra were violated. It is also not the contention of the learned counsel for the petitioner that the 4th respondent-Board while granting permission has violated any of the provisions of the said enactments. Insofar as water fountain and Laser Show project sought to be taken up by respondents 2 and 3 was concerned, it is brought to our notice that still the project is yet to be cleared by the 4th respondent-Board. Therefore, there is no necessity to deal with the said aspect.

However, we direct that the 4th respondent-Board shall continue to monitor, as to the conditions imposed by it from time to time and shall take appropriate steps as required under law to protect the Hussain Sagar lake from pollution and from violation of the provisions of the Environment (Protection) Act,1986 or the Water (Prevention and Control of Pollution) Act,1974. If, at any time, during the periodical inspection, it is found that the conditions laid down by the 4th respondent-Board are violated by respondent No.6, stringent action as required under law shall be taken.

The writ petition is disposed of with the above directions. There shall be no order as to costs.

(DEVINDER GUPTA, CJ)

13th September,2004

(C.V. RAMULU,J)

prk

To

1 The Secretary, Department of Youth Advancement Tourism & Culture,

Government of A.P.,Secretariat, Hyderabad.
2 The Vice Chairman, Hyderabad Urban Development Authority,

Paiga Palace, Opp. Police Lines, Secunderabad.

3 TheVice Chairman, Budha Purnima Project Authority,
1-8-323, Paiga Palace, Opp. Police Lines,
Rasoolpura, Secunderabad-3

4 Member Secretary, AP Pollution Control Board,
Maitrivanam, HUDA Complex, SR Nagar, Hyderabad -38.

5 Chairman & Managing Director, the A.P. Tourism

Development Corporation, Hyderabad.

6 2CCs to G.P. for Municipal Administration & Urban Development Department, High Court Buildings, Hyderabad (O.U.T.)

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When the Judgment was pronounced in the open Court, it was brought to our notice that Water Fountain and Laser Show Projects are of respondents 2 and 3. Since, the Projects are yet to be cleared by the 4th respondent-Board and for that reason, the said projects have not been dealt with by us and more over the area where the projects are sought to be undertaken is beyond 30 mtrs., and on that no objection was even raised by the petitioner.

Accordingly, we are making it clear that subject to clearance by the 4th respondent Board of the said projects, the same will not be objected to as per the directions issued by this Court in the earlier judgments.

(DEVINDER GUPTA, CJ)

13th September,2004

(C.V. RAMULU,J)

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ASSISTANT REGISTRAR

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SECTION OFFICER